

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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MALIBU MEDIA, LLC,	:	
	:	
Plaintiff,	:	Case No. 1:17-cv-01076-ALC
	:	
vs.	:	
	:	
PHILLIP WONG,	:	
	:	
Defendant.	:	
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**PLAINTIFF’S RESPONSE TO ORDER TO SHOW CAUSE [CM/ECF 37]**

Plaintiff, Malibu Media, LLC, hereby responds to this Honorable Court’s Order to Show Cause [CM/ECF 37] dated February 5, 2018, and respectfully states:

This Honorable Court’s Order to Show Cause [CM/ECF 37], requesting Plaintiff show why this action should not be dismissed for failure to move for default judgment, was issued less than two weeks after Defendant’s responsive pleading due date. As a general rule, Plaintiff allows a short “grace period” following the responsive pleading due date for Defendants to make an appearance, file a responsive pleading, or otherwise open communications with Plaintiff’s counsel regarding why they have not responded to the Complaint. Allowing this short time to pass before requesting default can avoid waste of judicial and attorney resources on the eventual motion to vacate default that often comes when Defendant realizes just a bit past the deadline that they wish to file a responsive pleading.

In this case, the docket shows that Plaintiff has not been dilatory in prosecuting this case. In fact, the request for default was already being drafted when this Honorable Court’s Order to Show Cause was received on February 5, 2018. The Request for Default [CM/ECF 38] was

subsequently filed on February 7, 2018, just fourteen days after Defendant's responsive pleading was due. Plaintiff respectfully submits that there is no prejudice to Defendant (who has chosen not to appear in this matter), in allowing 14 days to pass prior to requesting Default as the timing is reasonable under the circumstances.

Therefore, for the foregoing reasons, Plaintiff respectfully requests that this Honorable Court not dismiss the action for failure to prosecute. A courtesy copy of this Response will be forwarded to Chambers along with a copy of Plaintiff's pending Request for Default.

Dated: March 2, 2018.

Respectfully Submitted,

By: /s/ Kevin T. Conway  
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*Attorney for Plaintiff*

#### **CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Kevin T. Conway  
Kevin T. Conway, Esq.